IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO. 640 OF 2004

IN

SUMMARY SUIT NO. 1682 OF 2004

M/s. Divine Construction Co. .. Plaintiffs.

vs.

Kulbhushan Gupta .. Defendant.

Mr. Harinder Toor i/by Jurists UNO

for plaintiff.

Mr. S.R. Saudagar for defendants.

CORAM : S.U. KAMDAR, J.

DATE : 10TH OCTOBER, 2005.

P.C.

. Prima facie I find that the claim is barred by law of limitation. Under clause 3 of the agreement the amount was due and payable on or before 1.1.1997. Thus, the period of limitation commences from 2.1.1997 and expires on 1.1.2000. Though the plaintiff has relied upon the bills of exchange the same are undated. However, the learned counsel for the plaintiff contends that the limitation period has to be computed from the date of the date of the part payments made which is

3.5.2004 onwards and therefore the claim is filed within the period of limitation. There is no acknowledgement of part payments i.e. issuance of the cheques on 3.5.2004 bringing the claim within the period of limitation. In that view of the matter, unconditional leave to defend. Summons for judgment is dismissed.

2. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed four weeks from today. Affidavits list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.